

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 13, 2006 Session

WILLIAM JOSEPH CURRENT v. BRENDA GAY CURRENT

Appeal from the Chancery Court for Maury County
No. 02-083 Jim T. Hamilton, Judge

No. M2004-02678-COA-R3-CV - Filed March 15, 2006

This case concerns the equitable division of a marital home following the termination of a sixteen-year marriage. Husband appealed the trial court's decision to award Wife all the interest in the home as well as attorney's fees. We affirm the judgment of the trial court in all respects.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed.

WILLIAM B. CAIN, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Larry Samuel Patterson, Jr., Columbia, Tennessee, for the appellant, William Joseph Current.

L. Robert Grefseng, Columbia, Tennessee, for the appellee, Brenda Gay Current.

OPINION

William Joseph Current ("Mr. Current") and Brenda Gay Current ("Mrs. Current") were married on November 25, 1988. In 1993, the parties purchased a residence located at 2801 Campbellsville Pike in Columbia, Tennessee, for \$50,000. The down-payment for the residence was paid entirely from funds Mrs. Current received from the sale of her mobile home, which she owned before the marriage and acquired without any marital assets. At the time of the purchase, the residence was deeded only in Mrs. Current's name because of Mr. Current's admittedly poor credit.

The mortgage payment for the home was approximately \$400 per month. The mortgage was paid off in full in February 2002, with a final lump sum payment of \$7,000, contributed solely by Mrs. Current. The 2004 tax appraisal indicated the residence was worth \$77,500. The parties admit that the increase in the value of the property was partially due to improvements Mrs. Current made to the residence and partially due to "general appreciation."

The parties separated in December 2001 and there were no children born from the marriage. Mr. Current filed for divorce in Maury County Chancery Court on February 7, 2002. The trial court awarded Mrs. Current a divorce on July 20, 2004, based on Mr. Current's inappropriate marital

conduct and adultery. The trial court determined that Mrs. Current should retain all of the interest in the marital home and should be awarded attorney's fees in the amount of \$2,191.

Mr. Current filed a timely notice of appeal. On appeal, Mr. Current claims that the trial court erred in (1) awarding Mrs. Current the entirety of the marital home; and, (2) awarding attorney's fees to Mrs. Current.

The classification of property as either marital or separate property is a question of fact for the trial court. *Mitts v. Mitts*, 39 S.W.3d 142, 144-45 (Tenn.Ct.App.2000). Therefore, the trial court's findings with respect to property classification are reviewed *de novo* with a presumption of correctness below. *Mitts*, 39 S.W.3d at 144.

In this case, the trial court failed to state in its order or anywhere in the record whether the marital home was considered separate or marital property. Tennessee Code Annotated section 36-4-121(b)(1)(A) defines "marital property" for the purposes of property division in a divorce action. The statute states:

(1)(A) "Marital property" means all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of filing of a complaint for divorce, except in the case of fraudulent conveyance in anticipation of filing, and including any property to which a right was acquired up to the date of the final divorce hearing, and valued as of a date as near as reasonably possible to the final divorce hearing date. In the case of a complaint for legal separation, the court may make a final disposition of the marital property either at the time of entering an order of legal separation or at the time of entering a final divorce decree, if any. If the marital property is divided as part of the order of legal separation, any property acquired by a spouse thereafter is deemed separate property of that spouse. All marital property shall be valued as of a date as near as possible to the date of entry of the order finally dividing the marital property.

Tenn.Code Ann. § 36-4-121(b)(1)(A).

It is undisputed that the parties were married in 1988 and that the residence at issue was acquired in 1993, therefore it is clear that the property was acquired by the parties during the course of the marriage. Mrs. Current argues, however, that because Mr. Current's contributions to the marital home were *de minimis*, the Court should find that the residence was separate, not marital property and therefore not subject to equitable division between the parties.

The language of Tennessee Code Annotated section 36-4-121(b)(1)(A) is clear that monetary contributions made by either party towards the acquisition of the property are irrelevant in

determining the property's status as marital or separate property. The statute unambiguously provides that the marital property may be "acquired by either or both spouses" and "owned by either or both spouses." Tenn.Code Ann. § 36-4-121(b)(1)(A). Therefore, we find that the 2801 Campbellsville Pike residence was marital property and subject to equitable division.

However, a trial court is afforded wide discretion in dividing marital property and its distribution will be given great weight on appeal. *Ford v. Ford*, 952 S.W.2d 824, 825-26 (Tenn.Ct.App.1996). The trial court's division of marital property will not be disturbed on appeal unless it lacks evidentiary support or results from an error of law or a misapplication of the statutory factors. *Thompson v. Thompson*, 797 S.W.2d 599, 604 (Tenn.Ct.App.1990).

The factors to be assessed in making an equitable division of marital property are set out in Tennessee Code Annotated section 36-4-121(c). The statute provides:

(c) In making equitable division of marital property, the court shall consider all relevant factors including:

- (1) The duration of the marriage;
- (2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;
- (3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;
- (4) The relative ability of each party for future acquisitions of capital assets and income;
- (5) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;
- (6) The value of the separate property of each party;
- (7) The estate of each party at the time of the marriage;
- (8) The economic circumstances of each party at the time the division of property is to become effective;
- (9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;
- (10) The amount of social security benefits available to each spouse; and
- (11) Such other factors as are necessary to consider the equities between the parties.

Tenn.Code Ann. §36-4-121(c).

Although there is a presumption that marital property is owned equally, there is no presumption that marital property should be divided equally. *Bookout v. Bookout*, 954 S.W.2d 730, 731 (Tenn.Ct.App.1997). Each case involving the division of marital property must be decided

based on its own unique set of facts and circumstances. *Wade v. Wade*, 897 S.W.2d 702, 717 (Tenn.Ct.App.1994).

In this case, Mr. Current contends that he is entitled to a percentage of the marital residence because he made \$125 weekly contributions to a joint checking account, which were used by the parties to pay the household expenses and the mortgage on the residence. Mrs. Current asserts that although Mr. Current did make some \$125 weekly contributions to the joint account, his payments were inconsistent and his monthly living expenses actually exceeded the amounts he contributed to the account.

Because we have determined that the 2801 Campbellsville Pike home was marital property and therefore subject to equitable division, we must now determine whether the trial court's award of all of the interest in the marital residence to Mrs. Current was equitable. The trial court's order entered on July 20, 2004, made the following factual findings:

This case was heard on the 16th day of July, 2004.

The parties were married on November 25, 1988, at which time the husband had no job, no money, no credit, no nothing.

The wife was employed at General Motors, had a mobile home, which was unencumbered. She later went to work for the Saturn Corp., where she is currently employed. The mobile home was sold and the proceeds were used to make a down payment of the house at issue, located at 2801 Campbellsville Pike, Columbia, Tennessee, which was purchased in 1993 for Fifty Thousand (\$50,000.00) Dollars, financed (sic) with a thirty year loan. The wife added a deck to the home with her money, a central air and heating unit with her money and remodeled the bathroom with her money, along with paving the driveway, all with her money. They had a joint checking account which they were to each deposit One Hundred Twenty-five Dollars (\$125.00) each week - this money was used to pay for their living expenses. The house was deeded to the wife because the husband had no credit, there were outstanding judgments against him for unpaid credit card debts, his wages were subjected to garnishment at his job at Spontex.

The husband did make the \$125 deposits, not every week, but on a fairly consistent basis.

In 2001, the husband announced to the wife that he was leaving and moved in with another woman. They remained separated and on February 7, 2002, the husband filed this divorce action. The wife filed a Counter-Complaint alleging adultery on the part of the husband, which he admitted. After their separation, the wife paid off the husband's car and the balance of the house mortgage. The wife had made lump sum payments on this mortgage with her money and made the last payment of Seven Thousand (\$7,000.00) Dollars, after the husband left. The wife paid off a thirty (30) year mortgage in ten (10) years with her money. During the period from 1988, when they married until 2001 when the husband left for another woman, the wife had earned the sum of Six Hundred Fifty-three Thousand Two

Hundred Four (\$653,204.00) Dollars and the husband earned Three Hundred Thirty Thousand Seven Hundred Twenty-nine (\$330,729.00) Dollars.

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED by this Court as follows:

1. That the Defendant/Counter-Plaintiff, Brenda Gay Current, be and is hereby awarded an absolute divorce from the Plaintiff/Counter-Defendant, William Joseph Current on the grounds of inappropriate marital conduct, more specifically, that the Plaintiff/Counter-Defendant is guilty of adultery and that both parties be and are hereby restored all the rights and privileges of unmarried persons;
2. That Defendant/Counter-Plaintiff, Brenda Gay Current be and is hereby awarded all right, title and interest in and to the home located at 2801 Campbellsville Pike, Columbia, Tennessee;
3. That the Plaintiff/Counter-Defendant, William Joseph Current be awarded his Geo Tracker automobile; and
4. That the Plaintiff/Counter-Defendant, William Joseph Current pay the wife's attorney's fees in the amount of Two Thousand One Hundred Ninety-one (\$2,191.00) Dollars, along with the costs of this litigation.

The court's order and the record itself indicates that Mr. Current's contributions to the acquisition, preservation, and appreciation of the property were comparatively small. Mr. Current admittedly failed to assist in or monetarily contribute to repairs or improvements to the home and he rarely performed any domestic duties. The only contribution that Mr. Current alleges was the \$125 weekly deposit to the joint account, which was used by the parties to pay the mortgage and household expenses. Although the trial court did make the factual finding in its July 20, 2004, order that Mr. Current made these contributions on a "fairly consistent basis," we cannot find that the trial court erred in awarding Mrs. Current all of the interest in the marital home.

It is clear from the record that if Mr. Current is entitled any amount of the marital home, such amount would be nominal. In its July 20, 2004, order, the trial court awarded Mr. Current his Geo Tracker which was valued at \$2,500. We believe that award is sufficient to compensate Mr. Current for any equity which he may have accrued in the marital home due to his "fairly consistent" weekly deposits to the joint account.

Mr. Current also challenges the trial court's award of attorney's fees because he claims that Mrs. Current is financially able to pay her own attorney's fees. It is well settled that "[t]he decision to award attorney's fees to a party in a divorce proceeding, and the amount thereof, are largely within the trial court's discretion and will not be disturbed upon appeal unless the evidence preponderates against such a decision." *Houghland v. Houghland*, 844 S.W.2d 619, 623 (Tenn.Ct.App.1992). "Because an award of attorney's fees is treated the same as an award of alimony, the trial court should consider the factors of Tenn.Code Ann. [36-5-121(i)] to determine whether such an award

is appropriate.” *Wiltse v. Wiltse*, 2004 WL 1908803, No. W2002-03132-COA-R3-CV, at *8 (Tenn.Ct.App. Aug. 24, 2004). Tennessee Code Annotated section 36-5-121(i) provides:

(i) In determining whether the granting of an order for payment of support and maintenance to a party is appropriate, and in determining the nature, amount, length of term, and manner of payment, the court shall consider all relevant factors, including:

(1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;

(2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;

(3) The duration of the marriage;

(4) The age and mental condition of each party;

(5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;

(6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;

(7) The separate assets of each party, both real and personal, tangible and intangible;

(8) The provisions made with regard to the marital property, as defined in § 36-4-121;

(9) The standard of living of the parties established during the marriage;

(10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;

(11) The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so; and

(12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

Tenn. Code Ann. § 36-5-121(i).

The record reflects that Mr. Current was admittedly at fault in this action by engaging in inappropriate marital conduct and committing adultery, which resulted in the termination of a sixteen-year marriage. Furthermore, the record clearly shows that Mr. Current was in a far better position after his marriage to Mrs. Current than before. It is unrefuted that Mrs. Current's financial contributions to the marriage aided Mr. Current in acquiring employment and eliminating the significant credit card and gambling debts that he procured prior to the marriage. The Court therefore finds that the record supports the trial court's award of attorney's fees to Mrs. Current.

The judgment of the trial court is affirmed in all respects. The costs of appeal are assessed against Appellant, Mr. Current.

WILLIAM B. CAIN, JUDGE